

JAMAICA

IN THE COURT OF APPEAL

REVENUE COURT CIVIL APPEAL NO: 86/2004

PROCEDURAL APPEAL

IN CHAMBERS

BEFORE: THE HON. MR. JUSTICE K. HARRISON J.A

BETWEEN LIBERTY CAR RENTAL APPELLANT

AND THE COMMISSIONER OF TAXPAYER
APPEALS RESPONDENT

HERBERT HAMILTON FOR APPELLANT

YOLANDE LLOYD-SMALL FOR RESPONDENT

5TH MARCH 2005

1. This is a Procedural Appeal filed the 27th September 2004.
2. Written submissions have been served and filed by the respective Attorneys-at-law pursuant to Rule 2.4 of the Court of Appeal Rules (2002).
3. There has been some delay in the disposal of the appeal but this is due to the fact that the single judge made several requests in relation to the production and exhibition of certain documents pertinent to the appeal.
4. The major issue on appeal concerns the non-compliance with the provisions of Regulation 8 of the Revenue Administration (Appeals and Disputes Settlement) Regulation 2002.

5. It was contended by the Appellant in the Revenue Court "That the respondent did not fix a date for hearing of the appeal and did not give the appellant an opportunity to be heard before reaching his decision."
6. The Respondent admitted that there was a procedural irregularity in the proceedings and in its 'Notice of Point in Limine' asked the Court to remit the matter in accordance with Rule 30 of the Revenue Court Rules so that a hearing could be dealt with in accordance with the Regulations.
7. Anderson, J. in the Revenue Court, on the 20th September 2004, heard the application and made an order in terms of paragraph 2 of the Notice in Limine.
8. The Grounds of Appeal filed in this Court complain inter alia
 1. That the learned judge had erred and/or misdirected himself in law by failing to consider or to properly consider
 - a) the effect of the respondent's admission in its Notice of Point in Limine
 - b) whether the respondent's affidavit in support of the Notice provided any justification for the respondent's non-compliance.
 2. That the learned judge erred and/or misdirected himself in law in holding that Rule 30(supra) permitted the court, without more, to remit the respondent's decision
 3. That the learned judge erred and/or misdirected himself in law in holding that the costs of the application be costs in the appeal before the Commissioner of Taxpayer Appeals.
9. I have carefully considered the written submissions by the parties and it is my view, that there is merit in the submissions of the respondent. It is a fact, that the Respondent did not observe the rule regarding the procedure for conduct of the hearing, but this failure would amount to a mere irregularity and would not render the decision a nullity.

10. In the circumstances, the learned judge was quite correct in remitting the matter in accordance with Rule 30 of the Revenue Court Rules for a hearing to be held by the Respondent. It is further my view, that the Court's order as to costs was appropriate in the circumstances.
11. Costs of this appeal to the respondent to be taxed if not agreed.